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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,938	11/13/2003	Darshan Timbadia	128534-00701 (07027463)	9539
26565 7590 MAYER BROWN LLP P.O. BOX 2828 CHICAGO, IL 60690			EXAMINER MOSSER, KATHLEEN MICHELLE	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 07/24/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/712,938

**Applicant(s)**

TIMBADIA ET AL.

**Examiner**

Kathleen Mosser

**Art Unit**

3714

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04/09/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

In response to the request for reconsideration filed 04/09/2008, claims 1-13 and 17-21 are pending.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-13 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw (US 5565316) in view of Miller (US 7099620). Kershaw teaches a system including: one or more testing stations (Figure 1, element 3), configured to receive a plurality of test items, display the test items to a user (administering the test), record state information comprising time elapsed from the start of the examination, identification of the test items displayed to the user, and user interactions with the testing stations, and transmitting the state information (the examinee performance file, the content and use of which is described starting at col. 39: 48); a first server computer system in communication with the one or more testing stations, wherein the first server computer system is configured to electronically transmit the test items to the one or more testing stations, receive user information and responses to the test items from the one or more testing stations and receive the state information from the one or more testing stations, and electronically store the state information at substantially the same time that the state information is received (Figure 3, element 2 and Figure 6); and a second server computer system in communication with the first server computer system, wherein the second server computer system is configured to receive user information and responses to the test items from the first server computer system and to deliver test packages to the first server computer system (figure 3 element 1 and Figure 4), as in claims 1, 6 and 7. The first and second server communicate through a distributed network (claims 2) as is shown in col. 65: 1-5. the first server computer including one or more computers configured to perform the functions of a web server, a servlet engine, and an application server and having one or more

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storage devices (claim 5) is shown in col. 30: 43-45. the second server including one or more computers, one or more data storage devices and a package migration tool configured to format the test packages prior to delivery to the first server computer system (claim 8) wherein the package migration tool is further configured to manage the use of subsequent versions of the test package (claim 9), see the test packaging description starting at col. 28: 4. The second server computer further configured to score the responses to the test item is shown in at least col. 5: 49-51.

With respect to claims 13 and 20, Kershaw further teaches the method of administering the examination including: synchronizing an initial state object on a server and one or more testing stations in communication with the server, wherein the initial state object comprises the time within which the examination must be completed and the test items to be presented to the user; delivering a plurality of test items to the one or more testing stations; displaying the plurality of testing items to the user and recording the user's responses and delivering to the server a changed state object comprising the time elapsed, the test items presented to the user, and the user's responses to the test items at substantially the same time that a triggering event occurs on the testing station, wherein the triggering event comprises the user providing a response to a test item, see the detailed description of the test delivery system starting in col. 30: 37 (note language taken from claim 13, but substantially similar features occur in claim 20 and can be found within the same citation). Further, upon the failure of the testing station, the initial state object and the changed state objects stored in the server are used to recreate the examination on the testing station at the point of the examination where the failure occurred (see figure 60), as in claims 19 and 21.

Kershaw does not explicitly teach that the state information is transmitted at substantially the same time that the state information is received (claims 1, 13, and 20), the use of a distributed network, specifically the internet (claims 3 and 4) or the specific types of tests that the system is intended to deliver (examiner notes, that the tests of Kershaw are presumably linear, but this is not explicitly recited), specifically failing to state that the test is either linear (claims 11 and 17) or adaptive (claims 12 and 18). Miller teaches an online testing system which distributes tests using the internet, see col. 2:2 and allows for both linear and adaptive testing, see col. 3: 1-9. Miller further teaches that user responses are

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transmitted to the server at substantially the same time they are received (col. 10: 26 - col. 11: 9). It would have been obvious to one of ordinary skill in the art to incorporate the features of Miller into the system of Kershaw so as to allow for both adaptive and linear tests, to ensure updated and reliable records on the central computer and to provide for a broader distribution of tests through the internet.

### ***Response to Arguments***

2. Applicant's arguments filed 04/09/2008 have been fully considered but they are not fully persuasive. Applicant first asserts that neither Kershaw nor Miller teaches a second server computer, but fails to show how the correlated components of the Kershaw reference fail to teach this limitation. Applicant secondly argues that Kershaw and Miller fail to teach that the "state" information is transmitted at substantially the same time they are received by the user. Upon review of the prior art reference the examiner concedes that Kershaw only explicitly teaches making such a transmission during "end of day" or closing procedures. Though networked embodiments are suggested which hint towards storing the examinee performance file on a server and not the testing computers. The applicant however, has cited a portion of Miller which teaches transmitting the state of the exam at most every 60 seconds. The term "substantially" is a relative term, and the specification fails to further define the term beyond its ordinary meaning. The examiner maintains that one of ordinary skill in the art would recognize that receiving information within a minute of its entry occurs at "substantially the same time". Further, the examiner notes that the cited portion of Miller refers to this time being preferably 60s and also define 60s as a maximum time limit. It would be well within the ordinary skill in the art to alternate this time to any amount less than 60s if data was needed on a more frequent basis.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/  
Primary Examiner, Art Unit 3714

July 18, 2008